

1 IN THE HOUSE

BY MR. TAYLOR

2

HOUSE BILL NO. 180

3

IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4

TWENTY-THIRD SESSION

5

A BILL

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For an Act entitled: "An Act imposing a tax on retail sales in

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Alaska in lieu of all sales taxes now

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imposed; exempting certain sales; requir-

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ing the buyer to pay and the seller to

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collect the tax and establishing penalties

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for the failure to pay tax; establishing

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procedures for the collection of the tax

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and the disposition thereof; making it a

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misdemeanor for the seller to absorb or

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rebate taxes to a buyer and declaring an

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emergency."

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PREAMBLE

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WHEREAS, approximately 40,000 pupils, an increase of from

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ten to twelve per cent over the 1955 - 1956 biennium, are ex-

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pected to be enrolled in Alaska's public schools during the com-

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ing biennium, which increased enrollment will require Territorial

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expenditures estimated by the Department of Education to be

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\$12,500,000.00, an increase of approximately \$4,500,000.00 over

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the 1955 - 1957 biennium; and

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WHEREAS, greater expenditures are required each biennium

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to provide the basic necessities of life to those Alaskans who

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are unable to provide such necessities for themselves, including

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payments for old age assistance, general relief, aid to dependent

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children, aid to the blind, administration of the juvenile code

1 and payments to children's receiving homes and the cost of provid-
2 ing such services in the coming biennium has been estimated by
3 the Alaska Department of Welfare to be \$7,861,000.00. an increase
4 of approximately \$3,900,000.00 over the 1955 - 1957 biennium; and
5 WHEREAS, the 84th Congress of the United States has author-
6 ized Alaska to care for its mentally ill, and has appropriated
7 \$6,500,000.00 for the building of facilities and an additional
8 \$6,500,000.00 for operational purposes to be expended over a
9 period of two years; and which appropriations will, according
10 to present estimates by the Alaska Department of Health, fall con-
11 siderably short of the total cost of establishing and staffing an
12 Alaska mental health program; and

13 WHEREAS, Alaskans for many years have worked diligently for
14 the attainment of all the rights, privileges, and benefits to be
15 gained as full-fledged citizens of the United States of America
16 under Statehood, and which now, because of the tremendous growth
17 and prosperity of the Territory and because Alaskans have demonstra-
18 ted their ability and willingness to meet all the obligations and
19 responsibilities of self-government -- is very close at hand; and

20 WHEREAS, it appears that the present statutory sources of
21 revenue in Alaska will not produce sufficient funds to permit the
22 Territory to pay for those services which are needed and which it
23 is incumbent upon the Territory to provide; now therefore

24 BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

25 Section 1. DEFINITIONS. For the purposes of this Act the
26 following words and phrases shall have the meaning prescribed
27 in this Section unless the context clearly requires otherwise:

28 (1) "Selling price" means the consideration, whether
29 money, credits, rights, or other property, expressed in the terms

1 of money, paid or delivered by a buyer to a seller, all without
2 any deduction on account of the cost of tangible property sold,
3 the cost of materials used, labor costs, interest, discount, de-
4 livery costs, taxes, or any other expenses whatsoever paid or
5 accrued and without any deduction on account of losses; but shall
6 not include the amount of cash discount actually taken by a buyer;

7 (2) "Seller" means every person making sales at retail
8 or retail sales to a buyer or consumer, whether as agent, broker,
9 or principal;

10 (3) "Buyer" and "consumer" include, without limiting
11 the scope hereof, every individual, receiver, assignee, trustee
12 in bankruptcy, trust, estate, firm, copartnership, joint venture,
13 club, company, joint stock company, business trust, corporation,
14 association, society, or any group of individuals acting as a unit,
15 whether mutual, cooperative, fraternal, nonprofit, or otherwise,
16 municipal corporation, quasi municipal corporation, and also Alaska,
17 its departments and institutions and all political subdivisions
18 thereof, irrespective of the nature of the activities engaged in
19 or functions performed, and also the United States or any instru-
20 mentality thereof;

21 (4) "Tax year" or "taxable year" means either the calen-
22 der year, or the taxpayer's fiscal year when permission is obtained
23 from the Tax Commissioner to use a fiscal year in lieu of the calen-
24 der year.

25 (5) "Person" or "company", herein used interchangeably
26 means any individual, receiver, assignee, trustee in bankruptcy,
27 trust, estate, firm, copartnership, joint venture, club, company,
28 joint stock company, business trust, municipal corporation, corpora-
29 tion, association, society, or any group of individuals acting as

1 a unit, whether mutual, cooperative, fraternal, nonprofit, or other-
2 wise and the United States or any instrumentality thereof.

3 (6) "Sale" means any transfer of the ownership of, title
4 to, or possession of property for a valuable consideration and
5 includes any activity classified as a "sale at retail" or "retail
6 sale." It includes conditional sale contracts, leases with option
7 to purchase, and any other contract under which possession of the
8 property is given to the purchaser but title is retained by the
9 vendor as security for the payment of the purchase price. It also
10 includes the furnishing of food, drink, or meals for compensation
11 whether consumed upon the premises or not.

12 (7) "Casual or isolated sale" means a sale made by a
13 person who is not engaged in the business of selling the type of
14 property involved.

15 (8) "Sale at retail" or "retail sale" means every sale
16 of tangible personal property (including articles produced, fabri-
17 cated or imprinted) other than a sale to one who purchases for the
18 purpose of resale as tangible personal property in the regular
19 course of business or for the purpose of consuming the property
20 purchased in producing for sale a new article of tangible person-
21 al property or substance, of which such property becomes an ingre-
22 dient or component or is a chemical used in processing, when the
23 primary purpose of such chemical is to create a chemical reaction
24 directly through contact with an ingredient of a new article
25 being produced for sale.

26 The term "sale at retail" or "retail sale" shall include the
27 sale of or charge made for tangible personal property consumed
28 and/or for labor and services rendered in respect to the following:

29 (a) The installing, repairing, cleaning, altering:

1 imprinting, or improving of tangible personal property of or
2 for consumer excluding, however, services rendered in respect
3 to live animals, birds and insects;

4 (b) The constructing, repairing, decorating, or
5 improving of new or existing buildings or other structures
6 under, upon, or above real property of or for consumers, in-
7 cluding the installing or attaching of any article of tangible
8 personal property therein or thereto, whether or not such
9 personal property becomes a part of the realty by virtue of
10 installation, and shall also include the sale of services or
11 charges made for the clearing of land and the moving of earth
12 to the extent necessary for such constructing or improving,
13 unless the charge therefor is stated separately from other
14 charges made in connection with the work performed, under
15 such rules as the Tax Commissioner may prescribe;

16 (c) The furnishing of lodging and related services
17 to transients in or by a hotel, rooming house, tourist court,
18 motel, trailer camp, and the granting of any similar license
19 to use real property, as distinguished from the renting or
20 leasing of real property, and it shall be presumed that the
21 occupancy of real property for a continuous period of one
22 month or more constitutes a rental or lease of real property
23 and not a mere license to use or enjoy the same.

24 The term shall not include the sale of or charge made for
25 labor and services rendered in respect to the mere cleaning, furni-
26 gating, razing, or moving of existing buildings or structures,
27 or the building, repairing, or improving of any publicly owned
28 street, place, road, highway, bridge, or trestle which is used
29 or to be used primarily for foot or vehicular traffic.

1 (9) "Sale at wholesale" or "wholesale sale" means any
2 sale of tangible personal property which is not a sale at retail
3 and means any charge made for labor and services rendered for
4 persons who are not consumers, in respect to real or personal
5 property, if such charge is expressly defined as a "retail sale"
6 when rendered to or for consumers.

7 (10) "Business" includes all activities engaged in
8 with the object of gain, benefit, or advantage to the taxpayer or
9 to another person or class, directly or indirectly.

10 (11) "Engaging in business" means commencing, conduct-
11 ing, or continuing in business and also the exercise of corporate
12 or franchise powers as well as liquidating a business when the
13 liquidators thereof hold themselves out to the public as conducting
14 such business.

15 (12) "Cash discount" means a deduction from the in-
16 voice price of goods or charge for services which is allowed if
17 the bill is paid on or before a specified date.

18 (13) "Successor" means any person who, through direct
19 or mesne conveyance, purchases or succeeds to the business, or
20 portion thereof, or the whole or any part of the stock of goods,
21 wares, merchandise, or fixtures or any interest therein of a tax-
22 payer quitting, selling out, exchanging, or otherwise disposing
23 of his business. Any person obligated to fulfill the terms of a
24 contract shall be deemed a successor to any contractor defaulting
25 in the performance of any contract as to which such person is a
26 surety or guarantor.

27 (14) "Consumer" means the following:

28 (a) Any person who purchases, acquires, owns,
29 holds, or uses any article of tangible personal property

1 other than for the purpose of resale as tangible personal
2 property in the regular course of business or for the purpose
3 of consuming such property in producing for sale a new article
4 of tangible personal property or a new substance, of which
5 such property became an ingredient or component or is a chemi-
6 cal used in processing, when the primary purpose of such
7 chemical is to create a chemical reaction directly through
8 contact with an ingredient of a new article being produced
9 for sale;

10 (b) Any person engaged in the business of render-
11 ing professional or personal services to persons (as distin-
12 guished from services rendered to property of persons);

13 (c) Any person engaged in the business of contract-
14 ing for the building, repairing or improving of any publicly
15 owned street, place, road, highway, bridge, or trestle which
16 is used or to be used primarily for foot or vehicular traffic,
17 in respect, however, only to tangible personal property used
18 or consumed in such business;

19 (d) Any person who is an owner, lessee or has
20 the right of possession to or an easement in real or personal
21 property which is being constructed, repaired, improved,
22 cleaned, imprinted, or otherwise altered by a person engaged
23 in business, excluding only the United States, Alaska, and
24 its political subdivisions in respect to labor and services
25 rendered to their real property which is used or held for
26 public road purposes.

27 (15) "In Alaska" or "within Alaska" includes all fed-
28 eral areas lying within the exterior boundaries of Alaska.

29 Sec. 2. RETAIL SALES TAX IMPOSED. There is levied and there

1 shall be collected a tax on each retail sale in Alaska equal to
2 three percent of the selling price. The tax imposed under this
3 Act shall apply to successive retail sales of the same property
4 for such time as it shall remain law, and it shall be in lieu of
5 all other sales tax imposed in Alaska by any political subdivisions
6 or any other local governmental unit.

7 Sec. 3. EXEMPTIONS. The tax hereby levied shall not apply
8 to the following sales:

- 9 (1) Casual and isolated sales of property or service;
- 10 (2) The distribution and newsstand sale of newspapers;
- 11 (3) Sales which Alaska is prohibited from taxing under
12 the Organic Act or the Constitution or laws of the United States.
- 13 (4) Sales of motor fuel and aviation fuel, taxable
14 under Sec. 48-5-2, ACLA 1949, as amended by Ch. 47, SLA 1955;
- 15 (5) Sales to corporations which have been incorporated
16 under any act of the Congress of the United States and whose prin-
17 cipal purposes are to furnish volunteer aid to members of armed
18 forces of the United States and also to carry on a system of
19 national and international relief and to apply the same in miti-
20 gating the sufferings caused by pestilence, famine, fire, floods,
21 and other national calamities and to devise and carry on measures
22 for preventing the same;
- 23 (6) Sales of tangible personal property (other than
24 the type referred to in the next subsection hereof) for use by
25 the purchaser in connection with the business of operating as a
26 private or common carrier by air, rail, or water exclusively in
27 interstate or foreign commerce.
- 28 (7) Sales of airplanes or water craft for use in
29 conducting interstate or foreign commerce by transporting therein

1 or therewith property and persons for hire or for use in conduct-
2 ing commercial deep sea fishing operations outside the territorial
3 waters of Alaska; also sales of tangible personal property which
4 becomes a component part of such airplanes or water craft, and of
5 motor vehicles or trailers used by the holder of a carrier permit
6 issued by the Interstate Commerce Commission authorizing trans-
7 portation by motor vehicle across the boundaries of Alaska, in
8 the course of constructing, repairing, cleaning, altering, or im-
9 proving the same; also sales of or charges made for labor and
10 services rendered in respect to such constructing, repairing,
11 cleaning, altering, or improving;

12 Sec. 4. CONSIGNEE, FACTOR, BAILEY, AUCTIONEER DEEMED SELLER.
13 Every consignee, bailee, factor, or auctioneer authorized, engaged,
14 or employed to call or call for bids on tangible personal property
15 belonging to another, and so selling or calling, shall be deemed
16 the seller of such tangible personal property within the meaning
17 of this Act and all sales made by such persons are subject to its
18 provisions even though the sale would have been exempt from tax
19 hereunder had it been made directly by the owner of the property
20 sold. Every consignee, bailee, factor, or auctioneer shall
21 collect and remit the amount of tax due under this Act with re-
22 spect to sales made or called by him: Provided, that if the own-
23 er of the property sold is engaged in the business of selling
24 tangible personal property in Alaska, the tax imposed under this
25 Act may be remitted by such owner under such rules and regula-
26 tions as the Tax Commissioner shall prescribe.

27 Sec. 5. BUYER TO PAY, SELLER TO COLLECT TAX: PENALTIES. The
28 tax hereby imposed shall be paid by the buyer to the seller, and
29 each seller shall collect from the buyer the full amount of the

1 tax payable in respect to each taxable sale in accordance with
2 the schedule of collections adopted by the Tax Commissioner pur-
3 suant to the provisions of the next Section. The tax required
4 by this Act, to be collected by the seller, shall be deemed to be
5 held in trust by the seller until paid to the commissioner, and
6 any seller who appropriates or converts the tax collected to his
7 own use or to any use other than the payment of the tax to the ex-
8 tent that the money required to be collected is not available for
9 payment on the due date as prescribed in this Act shall be guilty
10 of a misdemeanor.

11 Where a buyer has failed to pay to the seller the tax imposed
12 by this Act and the seller has not paid the amount of the tax to
13 the Commissioner, the Commissioner may, in his discretion, proceed
14 directly against the buyer for collection of the tax, in which
15 case a penalty of ten percent may be added to the amount of the
16 tax for failure of the buyer to pay the same to the seller, regard-
17 less of when the tax may be collected by the commissioner; interest
18 and penalties shall apply in addition; and, for the sole purpose
19 of applying this Section the bimonthly tax period in which the
20 purchase was made shall be considered as the due date of the tax.

21 Sec. 6. COLLECTION OF TAX AND THE DISPOSTION THEREOF. The
22 Tax Commissioner shall have power to adopt rules and regulations
23 prescribing methods and schedules for the collection of all taxes
24 required to be collected under this Act. The methods and sched-
25 ules prescribed shall be adopted so as to eliminate the collection
26 of fractions of one cent and so as to provide that the aggregate
27 collections of all taxes by the seller shall, in so far as prac-
28 ticable, equal the amount of tax imposed by this Act. Such sched-
29 ules may provide that no tax need be collected from the buyer upon

1 sales below a stated sum and may be amended from time to time to
2 accomplish the purposes set forth herein.

3 The tax levied under this Act shall be enforced and collected:

4 (1) By the municipal taxing authority within the munic-
5 ipality,

6 (2) By the School District taxing authority within
7 the School District, but outside the limits of any municipality
8 situated therein, and

9 (3) By the Tax Commissioner in all areas outside such
10 municipalities or School Districts; provided, further that the
11 expenses of collection and enforcement within such municipalities
12 or School Districts shall be borne solely by the municipalities
13 and School Districts.

14 All taxes levied under this Act and collected by such munic-
15 ipalities or School Districts shall be accounted for as follows:

16 (1) The taxing authority of all municipalities shall
17 cover two-thirds of the taxes collected into the general fund of
18 the City, and shall remit the remaining one-third to the Tax
19 Commissioner.

20 (2) The taxing authority of the School Districts shall
21 cover two-thirds of the taxes collected into the general fund of
22 the School Board, and shall remit the remaining one-third to the
23 Tax Commissioner.

24 (3) The Tax Commissioner shall cover all taxes and
25 monies received from municipalities, School Districts, and from
26 any other sources under this Act, into the general fund of the
27 Territory.

28 Sec. 7. SELLER'S MONTHLY RETURN AND REMITTANCE. Each seller,
29 on or before the fifteenth day of the month succeeding the end of

1 each monthly period, shall make out a return for the preceding
2 monthly period, upon forms to be provided by the Commissioner set-
3 ting forth the amount of all sales, nontaxable sales, taxable sales,
4 the amount of tax thereon, and such other information as the Commis-
5 sioner may require, sign and transmit the same to the Commissioner
6 and such taxing authority as he may designate. The Commissioner or
7 any taxing authority so designated may require annual returns from
8 any taxpayer, setting forth such additional information as it may
9 deem necessary to correctly determine tax liability. The tax ac-
10 crued under the provisions of this Act, whether or not collected
11 from the buyer shall be paid by the seller to the Commissioner or
12 the taxing authority so designated may require annual returns from
13 any taxpayer, setting forth such additional information as it may
14 deem necessary to correctly determine tax liability. The tax ac-
15 crued under the provisions of this Act, whether or not collected
16 from the buyer shall be paid by the seller to the Commissioner or
17 the taxing authority so designated in monthly installments at the
18 time of transmitting the return above provided for.

19 Sec. 8 VENDING MACHINE SALES. The Commissioner or such
20 taxing authority as he may designate may authorize a seller
21 to pay the tax levied under this Act upon sales made through
22 vending machines and similar devices or where sales are made
23 under conditions of business such as to render impracticable the
24 collection of the tax as a separate item and waive collection of
25 the tax from the customer. No such authority shall be granted
26 except upon application to the Commissioner or his designee and
27 unless the Commissioner or his designee, after hearing, finds
28 that the conditions of the applicant's business are such as
29 to render impracticable the collection of the tax in the manner

1 otherwise provided. The Commissioner by regulation, may provide
2 that the applicant, under this Section, furnish a proper bond
3 sufficient to secure the payment of the tax.

4 Sec. 9. INSTALLMENT SALES AND OPTION LEASES. In the case of
5 installment sales and leases with an option to purchase, the
6 Commissioner, by regulation, may provide for the collection of
7 taxes upon the installments of the purchase price, or amount of
8 rental, as of the time the same fall due.

9 In case the consideration for the lease with an option to
10 purchase is not a bona fide consideration or does not represent a
11 reasonable charge therefor, or if the agreement designated as a
12 lease with an option to purchase is in fact not a true lease with
13 an option to purchase, the Commissioner shall issue equitable
14 rules and regulations for the proper classification of such trans-
15 action.

16 Sec. 10. TAX MAY BE PAID ON CASH RECEIPTS BASIS IF BOOKS ARE
17 SO KEPT. The Tax Commissioner, by general regulation, may provide
18 that a taxpayer whose regular books of account are kept on a cash
19 receipts basis may file returns based upon his cash receipts for
20 each monthly period and pay the tax herein provided upon such
21 basis in lieu of reporting and paying the tax on all sales made
22 during such period.

23 Sec. 11. SALES FROM VEHICLES. In the case of a person who
24 has no fixed place of business and sells from one or more vehicles,
25 each such vehicle shall constitute a "place of business" within
26 the meaning of this Act.

27 Sec. 12. REBATING OR ABSORPTION OF TAX BY SELLER PROHIBITED.
28 Whoever, excepting as expressly authorized by this Act, refunds,
29 remits, or rebates to a buyer, either directly or indirectly and

1 by whatever means, all or any part of the tax levied by this Act,
2 or makes in any form of advertising, verbal or otherwise, any
3 statements which might infer that he is absorbing the tax or pay-
4 ing the tax for the buyer by an adjustment of prices, or at a
5 price including the tax, or in any other manner whatsoever shall
6 be guilty of a misdemeanor.

7 Sec. 13. ADMINISTRATION. The provisions of this Act shall
8 be administered by the Territorial Tax Commissioner, except where
9 the taxing authorities of municipalities and school districts have
10 been delegated specific duties and functions herein.

11 Sec. 14. DURATION OF ACT. This Act shall be in full force
12 and effect for a period of three years from the date it becomes
13 law or until such time as the Territory has received from the
14 tax imposed herein the sum of Twenty Million (\$20,000,000.00)
15 Dollars, whichever is first in point of time.

16 Sec. 15. EFFECTIVE DATE. An emergency is hereby declared
17 to exist, and this Act shall take effect immediately upon its
18 passage and approval or upon its becoming law without such approval.

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